

UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. 2:10-cv-1087

\$88,029.08, MORE OR LESS,  
IN UNITED STATES CURRENCY,

Defendant.

(Katherine Anne Hoover, M.D. and  
John F. Tomasic;  
No pending federal criminal charges)

UNITED STATES MOTION FOR SUMMARY JUDGMENT  
AS TO THE INTEREST OF JOHN F. TOMASIC IN THE DEFENDANT CURRENCY

Comes now the plaintiff, United States of America, by counsel, Betty A. Pullin, Assistant United States Attorney for the Southern District of West Virginia, and hereby moves this Court, pursuant to Rule G(8)(c)(i)(B) and (ii)(B), Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, and Rule 56, Federal Rules of Civil Procedure, for the entry of summary judgment in its favor, and against any interest alleged by John F. Tomasic in the defendant currency, on the grounds that Mr. Tomasic lacks standing to defend this forfeiture action. In support of its motion, the United States provides as follows:

1. In order to defend a civil forfeiture action, a claimant must establish Article III standing, that is, a claimant must establish that he is either the colorable owner of the seized property or has a colorable possessory interest in it.

2. Article III standing requires the claimant to proffer some evidence of ownership interest.

3. Bare legal title to property is insufficient, standing alone, to confer standing upon a claimant. Courts generally look to dominion and control, such as possession, title and financial stake, as evidence of an ownership interest.

4. There exists no genuine issue of material fact with regard to the interest of claimant John F. Tomasic. Mr. Tomasic lacks Article III standing to defend this forfeiture action since he has neither an ownership interest nor a possessory interest in the defendant currency.

5. In support of this motion, the United States attaches hereto and incorporates herein the following exhibits, and also files simultaneously herewith a memorandum of law in support:

(A) Affidavit of FBI Special Agent James F. Lafferty II (Govt's SJ Exhibit A); and

(B) Certified copy of the "Order Granting Permission and Authority to Compromise and Settle Claim" (Doc. 220), filed on August 7, 2009, in Hoover v. W.Va. Regional Jail & Correctional

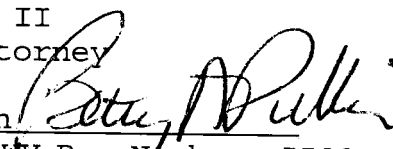
Facility Authority, et al., Civil Action No. 1:07-cv-00047 MK (USDC NDWV) (Govt's SJ Exhibit B).

WHEREFORE, for the foregoing reasons and for those stated in the accompanying memorandum of law, the United States respectfully requests the entry of summary judgment in its favor and as against any interest of claimant, John F. Tomasic, for lack of standing.

Respectfully submitted,

UNITED STATES OF AMERICA  
By Counsel

R. BOOTH GOODWIN II  
United States Attorney

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